

**Issue:** *Source determination.* Should North Dakota include the Coyote Creek Mine as part of the “source” in responding to adverse comments (and a related Citizen Petition to EPA’s Administrator and subsequent NOI to EPA) for the Coyote Creek Power Plant Title V permit?

## **Ex. 5 Deliberative Process (DP)**

**Discussion** – these analyses done on a base-by-case basis

1.

## **Ex. 5 Deliberative Process (DP)**

2.

## **Ex. 5 Deliberative Process (DP)**

3. Power Plant / Mine Chronology

- Years of adversarial history
  - State construction permit public notice issues (Steve and Mai worked on)
  - State construction permit, court challenge(s)
- State Title V proposed permit for the power plant and State's response
- Title V Petition to the Administrator on power plant permit
  - Alleging mine should be considered part of the source

## **Ex. 5 Attorney Work Product (AWP)**

- State withdrew title V permit sent to EPA for our review via letter to EPA, and said they were completing the permit record, they copied Petitioner
  - State is in the process of responding to comments
  - EPA's assistance
    - EPA sent letter to state suggesting how to improve the response to comments
    - Air Division (Gail Fallon and staff) conversations with their State counterparts
  - State shared several drafts

## **Ex. 5 Deliberative Process (DP)**

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- NDDH stated in this letter that if any significant changes were made to the draft permit they would restart the title V review process, including 30-day public comment period and 45-day EPA review. If no significant changes are made NDDH will re-issue the permit for EPA 45-day review.

4.

5.

## **Ex. 5 Deliberative Process (DP)**

6. **Ex. 5 Deliberative Process (DP)**

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- The Lignite Sales Agreement (LSA), which is what the company and State shared with the clients is a Variable Interest Entity (VIE) contract
  - As explained in Otter Tail’s 2017/2018 Annual Reports (Otter Tail is one of the part owners of Coyote Station), the LSA between Coyote Station and Coyote Creek Mining is considered a “Variable Interest Entity” (VIE). The mine was formed for the purpose of mining coal to meet the coal fuel supply requirements of Coyote Station from May 2016 through December 2040 and based on the terms of the LSA, is considered a variable interest entity (VIE) due to the transfer of all operating and economic risk to the Coyote Station owners, as the agreement is structured so that the price of the coal would cover all costs of operations as well as future reclamation costs.

• **Ex. 5 Deliberative Process (DP)**

○ **Ex. 5 Attorney Work Product (AWP)**

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